Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 95-419

In the Matter of)
Toll Free Service Access Codes) CC Docket No. 95-155

NOTICE OF PROPOSED RULEMAKING

Adopted: October 4, 1995 Released: October 5, 1995

Comment Date: November 1, 1995
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By the Commission:

TABLE OF CONTENTS

I. INTRODUCTION

1. Today, toll free telephone numbers in the United States can be identified by their common 800 service access code.[1] These numbers comprise a finite and very valuable public resource, one that satisfies an important business function and that is being used

[1] The 800 service access code may also be referred to as a Numbering Plan Area ("NPA").

increasingly to meet consumers' personal needs.[2] Recently, the industry organizations responsible for administering the system for assigning 800 numbers have informed us of the rapidly accelerated pace at which these numbers were being reserved[3] and used by customers. This pace of consumption even posed, at one time, the possibility of the 800 toll free numbers being totally depleted before an additional toll free code could be introduced. The recent experience with 800 toll free numbers leads us to believe that it is necessary to initiate a rulemaking proceeding through which we seek to assure that, in the future, toll free numbers are allocated on a fair, equitable, and orderly basis. We also seek to assure that the transition period during which the numbers within one toll free code are approaching full consumption and another code is being introduced is smooth, without disruption of service to existing customers or interruption in the availability of toll free numbers for new customers.

2. To develop a record and implement sound policy in this area, this Notice of Proposed Rulemaking ("NPRM") seeks comment on proposals to: (1) promote the efficient use of toll free numbers; (2) foster the fair and equitable reservation and distribution of toll free numbers; (3) smooth the transition period preceding introduction of a new toll free code; (4) guard against warehousing of toll free numbers; and (5) determine how toll free vanity numbers[4] should be treated.

II. BACKGROUND

3. In 1967, AT&T established the 800 service access code.[5] Unlike traditional telephone calls, where the calling party paid for the call, the toll charges for completed 800 calls were paid by the called party (i.e., the 800 subscriber). In addition, the called party's telephone number did not depend on the specific geographic location of that party, as was the case with regular telephone numbers. As the years progressed, these toll free and non-geographic characteristics proved so successful to businesses that the concept was adopted on

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[2] Toll free service has proven successful to businesses, particularly in the areas of customer service and telemarketing, because it provides potential customers and other persons with a free and convenient means of contacting those businesses. Personal toll free numbers are also becoming an increasingly popular means of communication. For example, parents can give their toll free number to a child away at college, enabling that child to call home free of charge at any time.

[3] For a definition of the "reserved" status of a toll free number, see infra paragraph 17.

[4] For a discussion of vanity numbers, see infra Section IV.D.

[5] A toll free number such as 800-NXX-XXXX consists of three parts: (1) a three digit numbering plan area ("NPA") or area code ("800"); (2) a three digit central office code ("NXX"); and (3) a four digit line number ("XXXX"). See Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, 10 FCC Rcd 4596 (1995) ("Ameritech Order").

an international basis.[6]

4. In 1986, the Commission initiated a proceeding to address how 800 service should be handled in a competitive environment ("800 Proceeding").[7] The conclusions reached in that proceeding shaped the 800 service market that exists today and the technology used to route 800 telephone traffic. At that time, the Regional Bell Operating Companies ("RBOCs") had begun to develop a database plan for 800 access. The Commission concluded that competition in 800 service would serve the public interest and that the implementation of the RBOC database plan would foster the development of such competition.[8] Unlike the "NXX system" that had been implemented by the local exchange carriers ("LECs") following the divestiture of AT&T, the database system permitted toll free subscribers to change service providers without having to change their toll free numbers, making toll free numbers portable.[9] We also concluded that AT&T should continue to offer 800 Directory Assistance using the number "1-800-555-1212" under tariff, but invited other parties to enter the market if they wished to do so.[10]

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[6] Toll free service is known internationally as "free phone," while domestically the service became known as INWATS or 800 Service.

[7] See Provision of Access for 800 Service, Notice of Proposed Rulemaking, 102 FCC 2d 1387 (1986); Provision of Access for 800 Service, 4 FCC Rcd 2824, 2825 (1989) ("800 Order"), recon., 6 FCC Rcd 5421 (1991) ("800 Reconsideration Order"), further recon., 8 FCC Rcd 1038 (1993).

[8] Prior to the implementation of the database plan, carriers routed 800 traffic using the "NXX system." This system assigned specific blocks of 10,000 numbers to a particular interexchange carrier ("IXC") whether the carrier had plans to use all 10,000 numbers or not. Calls were routed to IXCs by the local exchange networks based on the NXX code in the dialed 800 number. Because NXX codes were assigned to particular IXCs, 800 subscribers could not change carriers without changing their 800 number. The Commission found this system to serve as a barrier to effective competition in the 800 service market. See Competition in the Interstate Interexchange Marketplace, Report and Order, 6 FCC Rcd 5880, 5904 (1991) (refusing to grant AT&T streamlined regulation of its 800 services because of the absence of 800 number portability); Competition in the Interstate Interexchange Marketplace, Second Report and Order, 8 FCC Rcd 3668, 3669 (1993) (finding that once the 800 database had been implemented, AT&T's 800 services were subject to substantial competition).

[9] "Portability" in this context refers to the ability of customers to retain the same number when changing their toll free service carrier. See 800 Order, 4 FCC Rcd at 2825.

[10] Id.

5. The database plan proposed by the RBOCs[11] necessitated certain modifications to the LEC networks. The Commission required the RBOCs and GTE to meet minimum database access time standards in order to avoid unreasonably long call set-up times.[12] The LECs met these requirements by utilizing common channel signaling system 7 ("SS7") networks.[13] The new architecture required not only that LECs have SS7 technology, but also a new administrative database system known as the Service Management System ("SMS"). The SMS is a computer system that provides a user friendly environment for RespOrgs to enter the data about 800 numbers within their control. The SMS then loads this information

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[11] The database architecture in the RBOC's plan was similar to the architecture used by AT&T before divestiture. This plan greatly improved how 800 numbers were administered when compared to the NXX system. First, an external database reduced the amount of switches in the network needed to store the routing information for each 800 number. Second, since switches no longer needed to be updated each time a new 800 number was introduced and because the information was contained in a single database, the time needed to introduce a new number was shortened. Third, the centralized database allowed for customized services for each 800 number subscriber, such as time of day routing. Time of day routing allows a subscriber with a nationwide customer service number, for example, to have its calls routed to an east coast location for certain hours of the day and to a west coast location for other hours. Finally, the centralized database provided for the most efficient use of the toll free number resource by leaving toll free numbers that were unassigned to 800 subscribers available to other new customers.

[12] See 800 Reconsideration Order, 6 FCC Rcd 5421 (1991). The Commission modified its original Order to permit each LEC to withdraw NXX access in favor of mandatory database access, provided that, by March 1993, no more than 3% of each LEC's 800 traffic experienced a database access time of greater than 5 seconds. The Commission also required each LEC offering mandatory database access, by March 1995, to meet the following requirements: (a) none of its database 800 traffic could experience an access time of greater than five seconds; and (b) the mean access time for all its 800 database traffic must be 2.5 seconds or less.

[13] SS7 is a protocol for an out-of-band common channel signaling network that overlays the public switched telephone network ("PSTN"). Out-of-band signaling allows carriers to use their networks more efficiently and enhances flexibility in call handling and processing because signaling information is transmitted on circuits separate from the circuits used to connect calling and called parties. See In the Matter of Rules and Policies Regarding Calling Number Identification Service -- Caller ID, FCC 95-187 (adopted May 4, 1995). SS7 uses signaling transfer points ("STPs"), which are high-capacity data switches that act as traffic coordinators, to route messages containing information about a particular call between network switches with switch signaling points ("SSPs") and service control points ("SCPs"), which are the regional databases. For an 800 database query, SSPs originate the messages, and STPs route queries to the SCPs. SCPs then send a response via the STP back to the SSP, where the information is used to process the telephone call.

into regional LEC databases referred to as service control points ("SCPs"). The entire system is referred to as the SMS/800 database.[14]

6. The Commission has concluded that SMS/800 access is a Title II service that must be offered pursuant to tariff.[15] SMS/800 is administered by Database Services Management, Inc. ("DSMI"), a subsidiary of Bellcore, which, in turn, is wholly owned by the seven RBOCs. DSMI subcontracts management of the Number Administration and Service Center ("NASC"), which provides user support for the database, to Lockheed IMS. Database hardware is provided under contract by Southwestern Bell.

7. To obtain a toll free number, a subscriber must choose an entity responsible for managing that subscriber's SMS/800 record and coordinating with the service providers that will provide the subscriber's toll free service. The entity managing the subscriber records is known as a Responsible Organization ("RespOrg"), and only this RespOrg may access and modify that subscriber's record in the SMS/800 database. There are currently approximately 138 RespOrgs. Any entity that meets certain eligibility criteria may serve as a RespOrg.[16]

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[14] There are ten regional 800 SCP databases in the United States independently owned by Ameritech, Bell Atlantic, BellSouth, GTE, NYNEX, Pacific Telesis, SBC Communications, Southern New England Telephone Company ("SNET"), Sprint (Local), and US West. Canada is a member of the North American Numbering Plan, and its carriers also offer 800 portability to their customers and operate their own database. The Caribbean administrations of Anguilla, Antigua and Barbuda, Commonwealth of the Bahamas, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Dominican Republic, Grenada, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, Turks and Caicos, Puerto Rico, and the U.S. Virgin Islands do not currently have portable 800 numbers, instead continuing to support the NXX system.

[15] See Provision of Access for 800 Service, 8 FCC Rcd 1423 (1993). See also Bell Operating Companies' Tariff for the Service Management System, Tariff F.C.C. No. 1; 800 Data Base Access Tariffs, Order, 8 FCC Rcd 3242 (1993) ("Suspension Order"); 800 Data Base Access Tariffs and the 800 Service Management System Tariff, Order Designating Issues for Investigation, 8 FCC Rcd 5132 (1993) ("Designation Order"); Order, 9 FCC Rcd 715 (1994) ("800 Cost Disclosure Order").

[16] For example, a RespOrg can be an IXC, a LEC, a wireless carrier, or a large organization like Westinghouse. A RespOrg may, but does not necessarily have to, act as an 800 Service Provider, which is a telecommunications company that offers 800 service. Typically, a subscriber will contact its IXC to obtain a toll free number. That IXC will generally act as the subscriber's RespOrg, as well as its 800 Service Provider, and will reserve a toll free number by accessing the SMS database. Once the RespOrg enters specific subscriber routing information in the SMS database, the number is assigned to the subscriber. When the routing information has been loaded into the SCPs, the number is working and can be utilized to complete toll free calls.

RespOrgs' actions and responsibilities are governed by industry guidelines.[17] Under those guidelines, RespOrgs may reserve at any one time a limited quantity of toll free numbers.[18] They also must return toll free numbers to the spare pool when customers disconnect or cancel their service and must serve as troubleshooters for their toll free customers.[19]

8. The 800 service access code offered subscribers approximately 8 million toll free numbers.[20] As of June 13, 1995, there were approximately 600,000 800 numbers remaining in the common 800 database assignment pool. This figure represents what remained unreserved or unassigned in the database following a week in which 113,000 numbers were assigned,[21] and reflected a tripling of the weekly draw from the database projected by the industry less than one year earlier. If consumption had continued at this pace, the 800 database would have been depleted of unassigned numbers in July 1995.

9. Earlier in 1995, the industry selected the interchangeable NPA ("INPA")[22] 888

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[17] Industry Guidelines for 800 Number Administration, §1 (June 8, 1995) ("Industry Guidelines").

[18] Id. at §2.2.5.

[19] A RespOrg is responsible for accepting, referring, coordinating, and/or resolving all trouble reports related to an 800 service for which it is identified as the RespOrg in the SMS/800 database. Such troubleshooting responsibilities include providing around the clock contact numbers for receiving subscriber trouble reports and advising its subscriber and the affected 800 Service Provider of the status of service during resolution of an 800 problem. Id. at §1.3.

[20] Prior to 1986, AT&T was the only IXC capable of completing 800 calls. In May 1993, when 800 number portability was first offered, there were approximately three million 800 numbers assigned to various IXCs, with most of these numbers being assigned to AT&T. By July 1, 1995, over seven million 800 numbers were assigned.

[21] Letter from Kathleen M.H. Wallman, Chief of the Common Carrier Division, FCC to Michael Wade, President, Database Service Management, Inc., dated June 13, 1995 ("Wallman Letter of June 13, 1995"). For a definition of the "assigned" status of a toll free number, see infra para. 17.

[22] Traditionally, NPAs had either a "0" or a "1" as the middle digit. In January 1995, the industry introduced interchangeable NPAs ("INPAs") because there were no more available NPA codes of the 0/1 format. The introduction of INPAs permits the use of the digits two to nine in the middle position of the NPA, resulting in area codes such as 234.

as the first relief toll free code,[23] but initially estimated that modification in the local exchange networks to enable use and portability of 888 toll free dialing numbers would not be completed until April 1, 1996. The industry estimated that the IXCs' networks, on the other hand, would be able to support the new code as early as mid-December for some IXCs and January 1996 for others. The LECs, unable to advance the April 1996 deployment date, feared that the April date lay far beyond the date on which it appeared that there would be no 800 numbers left unassigned in the database. Thus, it appeared that without a modification of the number assignment process, there would likely have been a period of several months in which customers would have been unable to obtain new toll free numbers from their chosen 800 Service Provider. As a result, the industry approached the Common Carrier Bureau ("the Bureau") for assistance.[24] In response, the Bureau developed a plan to address: (1) the conservation of remaining 800 numbers; (2) the advancement of the April 1996 implementation date for the relief 888 toll free code[25]; and (3) the reclamation of unused toll free numbers.[26] As part of this effort, the Bureau imposed a number of temporary emergency measures. First, the Bureau determined that effective June 12, 1995, new or pending RespOrg applications would be suspended for a period of six months.[27] Second, the Bureau limited the quantity of 800 numbers that could be assigned in any given week to 28,000, or approximately the weekly usage rate that the industry originally projected and used in planning the transition period for 888 deployment. Each RespOrg was allocated an amount based on a formula relating to its historic role in the deployment of 800 numbers.[28] Third, the

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[23] The industry adopted the assignment of 888 as the first relief toll free code and the reservation of 877, 866, 855, 844, 833, and 822 as the subsequent toll free relief codes at the Industry Numbering Committee ("INC") meeting in February 1995. See Industry Numbering Committee Issue Identification Form, dated March 3, 1995.

[24] See Letter from Donald F. Evans, Vice President of Federal Regulatory Affairs, MCI to Kathleen M.H. Wallman, Chief of the Common Carrier Bureau, FCC, dated May 26, 1995; Letter from Marie T. Breslin, Director of FCC Relations, Bell Atlantic to Kathleen M.H. Wallman, Chief of the Common Carrier Bureau, FCC, dated June 5, 1995; Options from 800 National Product Team, dated June 6, 1995.

[25] The 888 deployment date has been advanced to March 1, 1996, and the Bureau continues in its efforts to advance that date even further.

[26] See Letter from Kathleen M.H. Wallman, Chief of the Common Carrier Bureau, FCC to Michael Wade, President, Database Service Management, Inc., dated June 9, 1995 ("Wallman Letter of June 9, 1995"); Wallman Letter of June 13, 1995.

[27] Wallman Letter of June 9, 1995.

[28] There have been three different allocation plans in effect since conservation measures were imposed on June 14, 1995. Each new plan has responded to more detailed market share analysis as well as input from the industry and interested parties. The first

Bureau concluded that the aging process[29] and the amount of time a number could be held in reserve status[30] should be shortened. In addition, to hasten 888 implementation, the Bureau has continued to conduct biweekly industry meetings to address the deployment of the software and hardware upgrades needed to support portable 888 toll free numbers. The purpose of these meetings is to provide an open forum in which the industry and the general

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conservation plan, which was effective June 14, 1995, allotted every RespOrg 200 numbers a week. See Wallman Letter of June 13, 1995. The Bureau refined this scheme to permit customers to continue to seek 800 numbers from the carriers to which they would ordinarily have turned for such services. Under the second conservation plan, which was effective June 22, 1995, each RespOrg received a minimum of 25 numbers per week. Since there are 138 RespOrgs, 3,450 numbers were taken from the weekly allocation of 28,000 numbers to meet this allotment, leaving 24,550 to be assigned as follows: each RespOrg received a share of the remaining 24,550 numbers that equaled the product of 24,550 and the percentage of all 800 numbers in working, assigned, and reserved status on August 1, 1994, held by that RespOrg on August 1, 1994. See Letter from Kathleen M.H. Wallman, Chief of the Common Carrier Bureau, FCC to Michael Wade, President, Database Service Management, Inc., dated June 21, 1995 ("Wallman Letter of June 21, 1995"). The Bureau also imposed reporting requirements upon the RespOrgs to permit the Bureau to audit compliance with the allocation plan. Id. Under the third, and current, conservation plan, weekly allocation of 800 numbers is based on both a RespOrg's market share and the change in its working numbers. See Letter from Kathleen M.H. Wallman, Chief of the Common Carrier Bureau, FCC to Michael Wade, President, Database Service Management, Inc., dated August 17, 1995 ("Wallman Letter of August 17, 1995). The Bureau believes that this approach is more rational and more sensitive to competitive trends because the current approach considers not only the market share of each RespOrg at a specific point in time, but also the growth that RespOrg experienced in 1994. The current allocation plan took effect on August 21, 1995. Id. For a definition of "working," "assigned," and "reserved" status, see infra para. 17.

[29] The aging process is defined as the period of time between disconnection or cancellation of a toll free number and the point at which that toll free number may be reassigned to another customer. Industry guidelines set the aging process at six months, with a provision that the period may be reduced to four months once the toll free resource is 95% exhausted. See Industry Guidelines at §2.2.6. Effective June 14, 1995, conservation measures imposed by the Bureau reduced the aging process to four months. See Wallman Letter of June 13, 1995.

[30] Reserve status is achieved at the point in time at which a toll free number has been held by a RespOrg for its customer. Under industry guidelines, a toll free number may be held in this status for up to 60 days. See Industry Guidelines at §2.4.3. Effective June 21, 1995, conservation measures imposed by the Bureau reduced the length of time a RespOrg can hold a number in reserve to 45 days. See Wallman Letter of June 21, 1995. This 45 day limit represents an increase from the initial 15 day limit placed upon toll free numbers being held in reserve status. See Wallman Letter of June 13, 1995.

public can share information regarding the implementation of the new toll free code. The first meeting was held on June 15, 1995; biweekly meetings are scheduled to be held until the 888 code is introduced.

10. We have decided to initiate this rulemaking because of industry requests to smooth the transition to an expanded set of toll free service access codes, starting with 888 and eventually deploying 877, 866, and so forth. The Commission has historically left most 800 numbering issues to the industry for resolution. We intend to continue this general policy, but in situations such as this, the Commission is obligated to become involved. Numbers are limited in quantity and are part of a highly competitive environment. We find this rulemaking is also needed to continue and to ensure the promotion of efficient, fair, and orderly allocation, and use of, these limited numbering resources. We realize that the industry cannot be expected to solve, on its own, issues relating to limited resources essential to all telecommunications service competitors, and we seek to provide a framework for resolution of these issues in the future. Our goal is to avoid in the future the situation we faced prior to the agency's intervention in the 800/888 transition: the imminent total depletion, or exhaust, of toll free numbers before the industry could make a new toll free code available to subscribers.

III. PETITION FOR IMMEDIATE RULEMAKING

11. On July 13, 1995, a Petition for Immediate Rulemaking was filed by Tansin A. Darcos and Company.[31] Petitioner asked the Commission to initiate an expedited rulemaking proceeding to address the implementation of various interim toll free rules and procedures.[32] For example, Petitioner asked the Commission to implement an "800 assist" procedure that would enable customers to dial into a number, such as "800-888-0888," to route calls into the 888 service access code until 888 is deployed on a nationwide basis.[33] We have concerns about the technical feasibility of Petitioner's proposals, as well as their effect on number portability. Nevertheless, we grant the petition in part to the extent that we are initiating this rulemaking proceeding, but otherwise deny the remainder of the petition. We encourage, however, Petitioner to participate in this proceeding and to file comments in response to this Notice.

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[31] See In the Matter of NPA 800 and NPA 888, Petition for Immediate Rulemaking, filed July 13, 1995.

[32] Id.

[33] Id. at 3, 4.

IV. DISCUSSION

A. Efficient Use of Toll Free Numbers

1. The Communications Act

12. Section One of the Communications Act of 1934 requires the Commission "to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service."[34] In addition, Title II of the Act confers upon the Commission responsibility for regulating the activities of those entities engaged in the provision of common carrier services. We find that these statutory mandates compel the Commission to promote the efficient use of existing toll free numbers and to ensure that new toll free numbers are assigned and used in an efficient, fair, and orderly manner. With respect to new toll free numbers, our goal in initiating this rulemaking proceeding is to assure their efficient use and to avoid the unanticipated rapid depletion experienced with 800 numbers.

2. Proposals

a. Making Toll Free Numbers Available to Subscribers Who Need and Want Them

13. We seek comment on proposals that would advance the efficient use of toll free numbers to ensure that they are available for subscribers who need and want them. We are concerned by reports that some subscribers are having toll free numbers assigned to them without even requesting them and using them little, if at all.[35] We seek comment on whether such distribution serves the public interest. Specifically, we seek comment on whether we should require that a RespOrg or 800 Service Provider have an affirmative request from a subscriber before assigning a toll free number to such a subscriber. We request comment on a further proposal that, for auditing purposes, records of such affirmative requests be retained by the RespOrg or 800 Service Provider for two years. In addition, we ask parties to address the Commission's legal authority to enforce such requirements and the relative advantages and disadvantages of imposing these requirements through carrier tariffs or Commission rules. We tentatively conclude that proposals like these serve the public interest in the fair and equitable distribution of scarce numbering resources.

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[34] 47 U.S.C. §151.

[35] For example, under one interexchange carrier's calling plan offering, each customer is automatically assigned an 800 number and a four digit PIN. There exists the distinct possibility that such numbers may be rarely, if ever, used by subscribers. At the same time, those numbers are removed from the SMS/800 database and are unavailable for subscribers that may actually need the numbers and would put them to productive use.

b. Escrow Requirement

14. At the present time, a RespOrg must pay a monthly charge of 70 cents for each toll free number drawn from the SMS/800 database.[36] Similarly, a subscriber pays a service charge to the 800 Service Provider for each toll free number assigned to that subscriber. Given these various charges, one would expect that market forces would dictate an efficient allocation of numbers, but that may not necessarily be the case. In an effort to encourage a more efficient use of toll free numbers, we seek comment on the feasibility of requiring a one time deposit into an escrow account for each toll free number held in reserved status. This amount could be in addition to the monthly charge RespOrgs and subscribers now pay. The deposit could be paid by RespOrgs, 800 Service Providers, third party agents who obtain toll free numbers for distribution, and/or toll free service subscribers. A deposit requirement could influence RespOrgs, 800 Service Providers, and third party agents to reserve only those toll free numbers for which they have customers, discourage parties from warehousing numbers for possible future use, and encourage toll free service subscribers to reserve only those numbers they actually need. Warehousing numbers, or cornering the market, is undesirable even when numbers are portable because having numbers when no one else does gives the holder an unfair competitive advantage. We seek comment on the advantages and disadvantages of requiring either some or all of these entities to pay a deposit into the escrow account. We also seek comment on whether a RespOrg, an 800 Service Provider, or a third party agent should be allowed to pass along the escrow charge to the 800 service subscriber. Further, we seek comment on how such an escrow account should work, how such a fund would be managed, and by whom such a fund would be managed. Commenters should address the requirement's impact on competition, particularly the effect upon smaller RespOrgs just entering the toll free business.

15. In addition, we ask parties to comment on the appropriate dollar amount that should be deposited in the escrow account for each number and on whether a reduced amount should be deposited if 800 Service Providers use PIN technology.[37] A lower deposit amount may provide carriers more incentive to use PIN technology. Another alternative would require only the RespOrg, and not the 800 subscriber, to pay a deposit for toll free numbers.

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[36] A RespOrg initially pays the 70 cent "customer record administration" fee when it reserves a toll free number from the SMS database and continues to pay that fee when the number is in "assigned," "working," or "disconnect" status. See Bell Operating Companies' Tariff for the Service Management System, Tariff F.C.C. No. 1, § 4.2(C). It is only when the number is returned to the spare pool or ported to another RespOrg that the original RespOrg ceases paying the administration fee. See supra para. 17 for a definition of "assigned," "working," and "disconnect" status.

[37] PIN technology refers to the use of a personal identification number ("PIN") in conjunction with a toll free number. See infra Section IV.A.2.d. for a further discussion of PIN technology.

We seek comment on whether an escrow requirement should be dependent on a particular threshold (e.g., only after the RespOrg had reserved 1% of all toll free numbers would it be required to deposit money into the escrow account). We also seek comment on an appropriate reservation threshold and on when the deposit should be returned (e.g., when the number is disconnected or the entity that pays the escrow deposit has generated a certain amount of traffic).

16. We propose that any deposit made by a RespOrg or 800 subscriber found to be warehousing[38] or hoarding[39] any toll free number would be forfeited. The deposit could also be forfeited if it was determined that a number was obtained simply to sell or broker to another entity. Numbers are a public resource,[40] and there are rules against selling or bartering numbers by individuals.[41] We seek comment on these proposals and on what actions the Commission can take to discourage RespOrgs or 800 subscribers from warehousing or hoarding toll free numbers and what remedy would be appropriate for such violations.

c. Lag Time

17. Under the present industry guidelines, toll free numbers are categorized according to status and may remain in different statuses for varying periods of time. There are nine categories in which a toll free number can be placed:

- "working" - a number that has been loaded into the SCPs and is being utilized to complete 800 service calls.[42]

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[38] See infra note 69 for a definition of warehousing.

[39] See infra note 72 for a definition of hoarding.

[40] See In the Matter of Administration of the North American Numbering Plan, Report and Order, CC Docket No. 92-237, FCC 95-283 (adopted July 13, 1995) ("NANP Order").

[41] See Industry Guidelines at §2.2.1.

> 800 Numbers are not to be treated as commodities which can be bought or sold, and no individual or entity is granted a proprietary interest in any 800 number assigned. Resp Orgs and 800 Service Providers are prohibited from selling, bartering, or releasing for a fee (or other consideration) any 800 Number.
>
> Reserving, Assigning, or activating (Working) 800 Numbers by Resp Orgs, 800 Service providers, or Customers for the primary purpose of selling, brokering, bartering, or releasing for a fee (or other consideration) that 800 Number is prohibited.

[42] Id. at § 2.4.5.

- "assigned" - a number that has specific subscriber routing information entered by the RespOrg in SMS/800 and is pending activation in the SCPs. An 800 number may remain in this status until changed to "working" or for a maximum of 12 months, whichever occurs first.[43]
- "reserved" - a number that has been reserved by a RespOrg for a subscriber. An 800 number may be held in this status for up to 60 days.[44]
- "spare" - a number that is available for assignment by a RespOrg.[45]
- "disconnect" - a number for which 800 service has been disconnected and an exchange intercept recording is being provided to inform callers of that status. After a designated interval, the 800 number status will change to spare.[46]
- "transitional" - a number that has been disconnected for less than six months but no exchange intercept recording is being provided. At the end of six months, the 800 number status is systematically changed to spare.[47]
- "suspend" - a number that has been temporarily disconnected and is scheduled to be reactivated. An 800 number may remain in this status until changed to working or for a maximum of 12 months, whichever occurs first.[48]
- "unavailable" - a number that is not available for assignment due to an unusual condition. Requests to make a specific 800 number unavailable must be submitted in writing to the NASC with the appropriate documentation of the reason for the request.[49]
- "NXX not open" - an 800 number that is in an NXX code which is not open or available for general ten digit number assignment.[50]

18. Concerns related to the lag time between any given status and "working" status are twofold. The first concern relates to the amount of time between withdrawal from the SMS database and conversion to working status. Typically, a subscriber will call an IXC to obtain a toll free number, and that IXC will act as the subscriber's RespOrg. The RespOrg reserves a toll free number for the subscriber by accessing the SMS/800 database, and the

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[43] Id. at §2.4.4.

[44] Id. at §2.4.3.

[45] Id. at §2.4.2.

[46] Id. at §2.4.6.

[47] Id. at §2.4.7.

[48] Id. at §2.4.8.

[49] Id. at §2.4.9.

[50] Id. at §2.4.1.

number is assigned only after specific customer routing information is entered in the SMS database. Following activation in the SCPs, the number is converted to working status and is available to complete toll free calls. While it is reasonable to expect some delay between the reservation of a number and its being put into use, we believe that the guidelines permit more time for that process than is sound. Under the present system, numbers are tied up even though they are not being used and, therefore, are not available for distribution to customers who may want and need them for immediate use. This practice contributes to an inefficient use of this valuable numbering resource. Therefore, we seek comment on two proposals designed to reduce the interval between reservation and conversion to working status. We believe that these proposals balance the need to provide a reasonable interval between reservation and working status with the need to efficiently and promptly allocate toll free numbers. First, commenters are asked to address a proposal to reduce the amount of time a toll free number can remain in reserved status from 60 days to 45 or 30 days. Second, we seek comment on a proposal to reduce the amount of time a toll free number can be assigned, but not working, from 12 months to 4 months.

19. The second concern related to lag time involves the "aging" process for toll free numbers, which is defined as the period of time between disconnection or cancellation of a toll free number and the point at which that toll free number may be reassigned to another subscriber.[51] A certain amount of lag time is necessary to prevent excessive misdialing, unreasonable expense to the new toll free subscriber, and confusion for the toll free caller. We believe, however, that the guidelines allow a longer aging process than is necessary or reasonable, resulting in an inefficient allocation of toll free numbers. If the length of the aging process is reduced, toll free numbers not currently in use will be returned to the spare pool more quickly, becoming available for reassignment to new subscribers requiring working numbers. We seek comment on the advantages and disadvantages associated with two proposals to reduce the amount of time toll free numbers can remain in a status other than working. We believe that these proposals will better balance the needs of toll free subscribers and callers with the need to recycle toll free numbers expediently and enhance efficient allocation of this valuable resource. First, commenters should address a proposal to reduce the six month aging period from disconnect to spare status to four months.[52] Second, commenters are asked to address a proposal to reduce the amount of time toll free numbers can be suspended but not reactivated, from 12 months to 4 months. Finally, commenters are asked to address other ways to improve any lag time that may currently exist as a result of the present industry guidelines.

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[51] Id. at §2.2.6.

[52] Industry guidelines state that the minimum aging period may be reduced to four months once the toll free resource is 95% exhausted. Id. at §2.2.6. Conservation measures recently imposed by the Commission on 800 numbers similarly reduced the aging period to four months. See Wallman Letter of June 13, 1995.

d. Personal Identification Numbers

20. We also ask parties to comment on the possible use of a personal identification number ("PIN") in conjunction with the use of some toll free numbers. Under this proposal, multiple customers could use a single toll free number. Based on discussions with the industry, we understand that, in connection with their personal 800 service, MCI and SkyPage are currently using PIN technology, while AT&T asserts that it will have the technology available on a nationwide basis for use with its True Ties offering in September 1995. A customer would be assigned a toll free number and a PIN of one, two, or multiple digits. The number of digits in the PIN would determine the number of subscribers that could be assigned to a single toll free number. PINs with more digits result in a greater number of permutations, which in turn results in a greater number of subscribers able to be assigned to a single toll free number. For example, with a four digit PIN, as many as 10,000 subscribers could use the same toll free number. To access such a toll free number, the subscriber would have to enter both the telephone number and the PIN.

21. We are aware of concerns that PIN technology does not permit portability in the same manner as toll free numbers without PINs and may be incompatible with some toll free services, thus disrupting the business plans of some companies. We are also aware that a PIN plan raises competitive concerns because companies requiring their customers to dial ten digits plus a PIN to reach their customers may be at a competitive disadvantage compared to companies requiring their callers to dial only ten digits.[53] We do not wish to cause such disruption or create a competitive imbalance in the 800 market by imposing a PIN "requirement;" therefore, we seek comment on the feasibility of plans to facilitate, encourage, or reward the use of a PIN system for at least some services, such as personal toll free service or paging service, that may make less intensive, or low use of the toll free numbers assigned to the service providers. A PIN plan for such toll free numbers would permit more intensive use of those toll free numbers. In this regard, commenters are asked to address a workable definition of low use. Our goal is to create a responsible plan for the allocation of toll free numbers and to encourage the use of PINs in connection with at least some services using toll free numbers where business plan disruption would not occur.

B. Mechanics of Opening New Toll Free Codes

1. Background

22. In planning for the deployment of new toll free codes, our goal is to avoid rapid, unanticipated depletion of these scarce numbering resources. Given the heightened interest in and demand for toll free numbers, it is particularly important to have policies and procedures designed to prevent a reoccurrence of such a threat in place well in advance of the

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[53] See Personal Communications Industry Association's Proposed Approach for the Toll-Free Resource (July 19, 1995).

deployment of new toll free codes.

2. Reservation of New Toll Free Codes

23. As the industry prepares to expand the number of codes used for toll free dialing, our goal is to make this process smooth, orderly, and fair to all participants. To that end, we seek comment regarding the current toll free reservation and assignment process, under which toll free numbers are reserved on a first come, first served basis.[54] Under existing Industry Guidelines, each RespOrg may reserve up to 1,000 numbers, or 15% of its total quantity of working toll free numbers, whichever is greater, at any given time.[55] For example, a RespOrg with 100,000 working toll free numbers could reserve 15,000 additional numbers from the SMS database, while a RespOrg with 500,000 working toll free numbers could reserve up to 75,000 additional numbers. A specific toll free number may be reserved for a maximum of 60 days on behalf of a RespOrg's customer before being converted to working status.[56] Large RespOrgs with multiple terminals are able to reserve mass quantities of toll free numbers in rapid order.[57] Conversely, the system may place smaller, less technologically sophisticated RespOrgs at a competitive disadvantage, since they do not have the capacity to reserve numbers in rapid order. The advantage enjoyed by the larger RespOrgs lies particularly in their ability to obtain strategic toll free numbers (i.e., vanity numbers).[58] In light of our goal to make allocation of toll free numbers a fair and equitable process and in light of the anticipated exhaust of 800 numbers, we seek comment on whether these reservation guidelines should be codified and/or amended. For example, if a certain number was requested by more than one party, should we require that the parties participate in some form of dispute resolution? In the event that dispute resolution failed, should the

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[54] See Industry Guidelines at §2.3.1 ("[s]pecific 800 Number requests are honored based upon availability, on a first-come, first-served basis, at the time the reservation request is initiated by a Resp Org into SMS/800").

[55] Id. at §2.2.5.

[56] Id. at §2.3.2. For a discussion of a Commission proposal to reduce that 60 day reservation period, see supra Section IV.A.2.c.

[57] Currently, six RespOrgs reserve toll free numbers using mechanized generic interface ("MGI"), which provides a direct interface between those RespOrgs' computer operations systems and the SMS/800 database. MGI permits those six RespOrgs to perform number administration and record administration functions and allows for processing of large volumes of action very quickly. In November 1994, Southern New England Telephone Company filed a petition in which it was argued that the current reservation system is skewed in favor of larger RespOrgs with more advanced technology. A Report and Order will soon be issued in that proceeding.

[58] For a discussion of vanity numbers, see infra Section IV.D.

number be assigned based on a lottery? Commenters are asked to address this proposal, as well as whether if we codified the current guidelines and applied them to the new toll free codes, this would permit depletion of toll free numbers to occur in an unreasonable way. We also ask parties to comment on whether we should have different reservation procedures for certain codes that are in high demand (e.g., "8XX-555"). Such codes may be highly valuable to businesses, and the distribution of such numbers must be fair and equitable.

3. Phased Introduction of New Toll Free Service Access Codes

24. We seek comment on whether, to prevent the immediate depletion of new toll free numbers and the overload of the SMS system, new toll free service access codes, once operational, should be gradually activated. We ask parties to comment on what measure, if any, we should adopt to effectuate a gradual implementation of the new toll free code. For example, should we limit the quantity of numbers that can be drawn from the database in a given time period? We are especially concerned about the initial quantity of 888 numbers that will be taken from the spare pool once the current conservation plan is lifted. We seek comment on the advantages and disadvantages of such a plan, how it should be implemented, and what role the Commission should play, if any.

25. We understand that there is a maximum number of transactions that the data links between the SMS and the SCP can accommodate in one day.[59] We are concerned that, because of the current capacity of these links, initially there will be a tremendous volume of activity over these data links when the new toll free code becomes available. Particularly in light of conservation measures involving 800 numbers that have been in place in recent months, we expect that there will be high demand for 888 numbers on the first day the new code is available. Such high volume activity may affect the overall performance of the SMS system and its ability to accurately and efficiently send messages to the SCPs, thereby impacting both new toll free service and existing 800 service. We seek comment on whether we should require expansion of the data links to accommodate the new volume of traffic, or whether this increased volume is only temporary. We also seek comment on the method that should be adopted to ensure that there is no degradation in the performance of the SMS when there is a high volume of activity on the data links. Specifically, we propose allowing numbers to be reserved 45 days in advance of the general availability of the next toll free code, but not allowing those reservations to change to working status until the availability date or beyond. We also propose limiting the quantity of numbers that can change from reserved to assigned to working status in one day. We believe these proposals will help to

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[59] When a toll free number is changed to working status, the SMS will send a data message containing routing information to all SCPs. It is only after this process is completed that the SCP has the information necessary to make the toll free number active. Similar data messages are sent from the SMS to the SCPs over the same data links when there is a change, for example, in Service Provider or vertical service.

prevent overload of the data links between the SMS and the SCPs and will preserve the integrity of both new and existing toll free service. We seek comment on these proposals.

4. Implementation Plan for Next Toll Free Code Beyond 888

a. Background

26. In an effort to prevent a situation similar to the one faced today whereby most 800 numbers will be assigned before a new code can be opened, we propose that the planning for the introduction of new toll free codes start well in advance of the projected total consumption of the previous toll free code. In this context, planning refers to all the steps necessary to prepare the public switched telephone network ("PSTN") for the general availability of the new toll free code. The industry already has well-established methods of network planning in use for other aspects of its business such as sales projections and trend analysis. It is not uncommon for a carrier to have three and five year plans that address such issues as customer growth, network topology, traffic planning, network architecture, and exhaust of area codes.[60] The proposals we identify below would be an extension of the carriers' current planning procedures.

b. Proposals

27. We believe that the industry must improve its ability to identify when depletion of one code is sufficiently near to require deployment of the next toll free code. In that regard, we propose that the Commission identify a trigger that would alert the industry that the current toll free code is sufficiently near completion to require that the next toll free code be prepared for deployment. One approach could be to commence planning for the next toll free code as soon as the previous toll free code is introduced. Under a second approach, the triggering event might be when unassigned numbers in the 888 database decline to a specified percentage of the total numbers in the 888 database. For example, if we choose 50% as the implementation trigger, then once 50% of the toll free numbers are in use, leaving 50% unassigned, deployment of the next toll free code would begin. Other triggers also might be appropriate. Commenters are asked to address when is the optimal time to commence implementation of the next toll free code and to identify the entity that should oversee this implementation. Potential candidates for overseeing implementation include, among others, the Commission, the newly created North American Numbering Council ("NANC"), an industry group, a Federal-State Joint Board, or a Joint Conference.

28. We believe that the industry also must improve the transition process associated with introducing a new toll free code. We tentatively conclude that it is feasible, desirable, and in the public interest to plan with more foresight and on shorter notice, for the

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[60] Exhaust of area codes occurs when no spare numbers remain in the SMS/800 database for assignment to the general public.

introduction of future toll free codes. Specifically, we seek comment on whether it would be reasonable to mandate implementation of a new toll free code on six months' notice. We propose that this six month period commence when a certain occurrence, as discussed above, triggers the decision to open the new toll free code. In the 888 implementation meetings, the SMS/800 and SCP[61] vendors, as well as the various switch vendors, stated that their products will support 888 as well as the remaining toll free codes. We can identify no technical reason for delaying new toll free code introduction. We believe that a six month period would provide adequate time to deploy any hardware or conduct any testing needed before a new code can support live traffic. Parties are asked to comment on any technical limitations to opening a new toll free code within six months of the triggering event.

29. Related to the implementation of new area codes are the technological upgrades that must occur before new codes can be used. We tentatively conclude that all network switches in the United States should have, at a minimum, the software needed to support all toll free codes reserved by the industry in January 1995 installed by February 1997. This includes switches both with SSPs and without SSPs.[62] Since the major switch vendors have already committed to developing the software and, in many cases, have already developed the software necessary to support all of the reserved toll free codes, we do not anticipate any technical obstacles to this proposal. We believe that having the software available in all switches will greatly reduce implementation schedules needed for additional toll free codes. When the next toll free code is needed, only hardware upgrades and testing will be necessary before the new code is available for general use. We seek comment on this tentative conclusion and on whether the February 1997 deadline is reasonable.

30. We do not consider the situation we face in 888 implementation, where some of the LECs are routing calls using the new 888 code through a tandem and calls using the 800 code through an end office, a viable solution for future toll free codes. We believe that routing the calls using new codes through a tandem rather than an end office is both inefficient and unnecessarily costly to the interconnecting carriers that have circuits carrying all their 800 calls from LEC end offices. We also believe that allowing different routing schemes would undermine the goal of treating all toll free codes the same. If the goal to install the software to support all toll free codes in all toll free switches is met, we see no reason to allow the routing of new codes to be done any differently than the routing of

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[61] See supra note 13 for a discussion of SCPs.

[62] Switches with SSPs ("switch signaling points") have SS7 capability and will query the database for toll free number information. Switches without SSPs must be able to route the new toll free code to an SSP. Those non-SSP switches must be able to distinguish a toll free number from a POTS ("plain old telephone system") number so that: (1) the toll free number is routed to the SSP switch that will perform the database query; and (2) the proper billing record is generated and the called party, rather than the calling party, will be charged for the toll free call. See supra note 13 for a further discussion of SS7 and SSPs.

previous codes. We expect, for example, that 800 calls as well as 888 and subsequent toll free code calls, will be routed by the LEC offering originating access for an 800 call over the same trunk groups connected to their interconnecting carriers.[63] We tentatively conclude that each toll free code should meet the call set-up time requirements established in the 800 Database proceeding.[64] We seek comment on this proposal.

5. Tracking Toll Free Number Usage

31. To promote the efficient development of the toll free market and the efficient use of toll free numbers, we tentatively conclude that more comprehensive information on the toll free market and on number usage should be publicly available. In general, the availability of additional information reduces uncertainty, facilitates planning, and helps companies minimize costs in a competitive economy. In addition, better information about toll free number utilization would permit more effective analysis of anticipated exhaust.[65] We propose that the administrator of the SMS/800 database, currently DSMI, be required to submit periodic reports to the Commission on toll free number utilization, and we seek comment on the nature and the frequency of these reports. We tentatively conclude that the reports should include information of the following type for each toll free service access code: (1) the quantity of numbers that are in spare status and available for use; (2) the quantity of numbers that are in working status and are in use; (3) monthly usage, or the quantity of numbers assigned to working status each month; and (4) estimated time remaining before that code is exhausted, along with the method used to calculate the estimated time remaining. The report should also set forth the quantity of numbers assigned to the various categories as set forth in

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[63] LECs and their interconnecting carriers will link their networks at either a LEC access tandem or a LEC end office. The choice of network topology, i.e., whether to use access tandems or end offices, is generally one made by the interconnecting parties based on distance between the two carriers and the amount of traffic expected to flow between them. For example, AT&T may decide to interconnect at an end office in downtown Chicago because of high traffic volume, but may decide to connect to an access tandem in a smaller, less populated area where the volume of traffic is lower. Interconnecting carriers may be IXCs, competitive access providers ("CAPs"), wireless carriers, or other independent LECs.

[64] See 800 Reconsideration Order, 6 FCC Rcd 5421. In that Order, the Commission stated that, by March 1, 1995, no 800 traffic for the RBOCs or GTE could experience an access time of greater than five seconds, and the mean access time for all 800 traffic carried by these carriers had to be 2.5 seconds or less.

[65] Under current industry guidelines, resource exhaust is defined as "an emergency/ situation where the industry has agreed to invoke conservation measures to delay exhaustion of the toll fee [sic] number resource." See Industry Guidelines at page iv. The conservation mode is invoked by industry when relief will not be available at the projected time of 90% fill rate of the current toll free code. Id.

the industry guidelines.[66] We note that the total quantity of toll free numbers assigned monthly from the spare pool of numbers is available monthly and is published semi-annually.[67] Even with this report, the method described above to project 800 exhaust may not be sufficient. We also seek comment on whether additional information on the toll free market should be reported to the Commission and made publicly available. Such information might include, for example, information on usage by type of toll free number assignment, such as business, personal, or access. Accordingly, we propose to direct the Chief of the Common Carrier Bureau to establish the reporting requirements necessary to make available timely information on the use of toll free numbers.

C. Warehousing of Toll Free Numbers

1. Background

32. RespOrgs are currently limited in the quantity of toll free numbers they may reserve at any one time by voluntary, good faith compliance with industry guidelines.[68] Prior to the introduction of our conservation measures, the rapid depletion of 800 numbers had prompted growing concern that, despite industry guidelines, 800 numbers were being warehoused[69] rather than immediately assigned. We tentatively conclude that warehousing of toll free numbers by communications service providers subject to Title II of the Communications Act is an unreasonable practice, and, thus, inconsistent with the public interest. We seek comment on this tentative conclusion and ways to eliminate warehousing, as suggested below.

2. Proposals

33. In response to the rapid depletion and imminent exhaust of 800 numbers, the

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[66] See supra paragraph 17 for an explanation of the categories contained in §2.4 of the Industry Guidelines.

[67] The information is available in the public reference room maintained by the Industry Analysis Division ("IAD") and is published in Trends in Telephone Service, an IAD publication that tracks the usage of toll free numbers on a semiannual basis.

[68] See Industry Guidelines at §2.2.5 ("[a]t any given time, each Resp Org entity can have up to 1000 numbers reserved or 15% of its total quantity of working 800 [s]ervice numbers, whichever is greater").

[69] The term warehousing is used to describe a RespOrg obtaining toll free numbers from the database without having an actual subscriber for whom those numbers are being reserved. Warehousing results in the RespOrg's acquiring and holding scarce toll free numbers beyond the RespOrg's immediate needs and prevents the distribution of those numbers to RespOrgs that have actual subscribers needing working toll free numbers.

Commission initially reduced the percentage of toll free numbers a RespOrg could reserve from 15% of its working numbers to 3%.[70] The Bureau eliminated the 3% limit, however, because the weekly take rate would never rise above 28,000 toll free 800 numbers per week.[71] We seek comment on whether once the Commission is no longer limiting the total quantity of toll free numbers that may be drawn from the database, we should impose a permanent cap on reserved numbers of 3% or some other number less than 15%, in an effort to prevent a large pool of toll free numbers from remaining in reserve status (i.e., being warehoused). We also seek comment on what remedy the Commission would have against a RespOrg found to be warehousing toll free numbers. Commenters should be specific as to the nature of any recourse and the means by which such recourse would be enforced. Moreover, we request comment on what, if any, penalty should be imposed if a customer is found to be hoarding[72] toll free numbers. We tentatively conclude that the Commission has the authority to penalize RespOrgs for violating any warehousing controls the Commission may adopt, and that an appropriate fine may be imposed[73] and even de-certification of the entity as a RespOrg may be necessary. We seek comment on this tentative conclusion and on whether other remedies may be appropriate.

34. To understand why 800 numbers have been consumed so much more quickly than the industry had initially anticipated, the Bureau has been investigating who was taking these numbers and for what uses. As a result of the Bureau's investigation, we find that toll free subscribers include business subscribers, residential or personal subscribers, and access subscribers, a term we use to describe those using voice mail and paging services. In a further effort to prevent warehousing of toll free numbers, we propose requiring RespOrgs to certify to the accuracy of certain subscriber information. We tentatively conclude that all RespOrgs should certify to the Commission that: (1) there is an identified subscriber who has agreed to be billed for service associated with each toll free number requested from the database; and (2) there is an identified, billed subscriber before switching a number from reserved or assigned to working status. There are allegedly instances in which subscribers may claim working status when, in fact, the toll free number is not actually working. The

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[70] See Wallman Letter of June 13, 1995.

[71] See Letter from Kathleen M.H. Wallman, Chief of the Common Carrier Bureau, FCC to Michael Wade, President, Database Service Management, Inc., dated June 26, 1995 ("Wallman Letter of June 26, 1995").

[72] Hoarding occurs when a toll free subscriber acquires more numbers from a RespOrg than it intends to immediately use. This practice protects the subscriber in the event of a toll free number shortage, but it results in toll free numbers remaining inactive and unavailable for subscribers in need of working numbers. We note that the Commission has received a number of complaints about hoarding of 800 numbers. See Options from 800 National Product Team, dated June 6, 1995.

[73] See, e.g., 47 U.S.C. §§502 and 503; 47 C.F.R. §1.80.

proposed certification would be required under penalty of false statement[74] and would require that an officer of the company provide name, address, telephone, and facsimile numbers. To the extent that a subscriber is itself subject to regulation under Title II, we propose that it would also be required to meet the same certification requirements. We seek comment on this certification proposal and on whether certification should be required on a monthly, quarterly, or yearly basis. We ask parties to address the extent to which the information requested is proprietary.

D. Vanity Numbers

1. Background

35. A vanity number is a telephone number for which the letters associated with the number's digits on a telephone handset spell a name or word of value to the number holder. Examples of such vanity numbers include "1-800-THE-CARD" and "1-800-FLOWERS." For purposes of this NPRM, vanity numbers also include any numbers in which the holders have a particular interest, be it economic, commercial, or otherwise. For example, certain manufacturers dedicate toll free numbers for emergency recall situations or consumer inquiries. As new toll free codes become available, a question arises as to whether the current holder of an 800 vanity number should have a right of first refusal or other priority on the equivalent number drawn from a new toll free code. Companies may have a financial interest in being able to reserve these equivalent vanity numbers because of their high visibility, consumer recognition, and the confusion that may ensue, for example, if one subscriber uses the toll free number "1-800-THE-CARD" and a competitor uses the toll free number "1-888-THE-CARD." Some 800 number holders may have invested substantial resources in advertising the number and establishing a reputation for it.[75] At this time, we have no way of

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[74] Persons making false statements can be punished by fine or imprisonment under the Communications Act. See, e.g., 47 U.S.C. §220(e). Title 18 also provides penalties for false statement. See 18 U.S.C. §1001.

[75] See, e.g., Letter from J. C. Reed, Government Employees Insurance Company to Reed Hundt, Chairman of the FCC, dated June 5, 1995; Letter from Christopher G. McCann, 1-800-FLOWERS to Reed Hundt, Chairman of the FCC, dated July 11, 1995; Letter from John C. Hartman, 800-Discount Club, Inc. to Kathleen M.H. Wallman, Chief of the Common Carrier Bureau, FCC, dated July 24, 1995; Letter from Arley M. Clark, Bass Pro Shops to Reed Hundt, Chairman of the FCC, dated July 25, 1995; Letter from Robert Jenny, Warner-Lambert Company to Reed Hundt, Chairman of the FCC, dated July 25, 1995; Letter from Brooke R. Weisleder, Weisleder Tele-Communications, Inc. to Reed Hundt, Chairman of the FCC, dated July 26, 1996; Letter from Eddie Aldredge, Selectel to Reed Hundt, Chairman of the FCC, dated July 26, 1995; Letter from William A. Elmer, HTH Inc. to Reed Hundt, Chairman of the FCC, dated July 26, 1995; Letter from Linda Thompson Orfanos, Kemper National Insurance Companies to Reed Hundt, Chairman of the FCC, dated July 27, 1995;

knowing how many 800 number holders would want corresponding 888 numbers. Our efforts to encourage the industry to provide such information have not yielded any response. In the end, we must balance goodwill and the holder's interest in a vanity 800 number against the need to manage a limited resource.

36. The Commission has characterized telephone numbers as a public resource that is not the property of the carriers.[76] The Commission has further stated that carriers "do not 'own' codes or numbers, but rather administer their distribution for the efficient operation of the public switched telephone network."[77] With respect to our jurisdiction over numbering issues, we have recently stated that we may assert jurisdiction over all numbering issues that are interstate in nature or if the facts of a particular situation render it "not possible to separate the interstate and intrastate components of the asserted regulation."[78]

Letter from Jane A. Murphy, Philbrick's Sports Super Store to Kathleen M.H. Wallman, Chief of the Common Carrier Bureau, FCC, dated July 28, 1995; Letter from Mark J. McSweeney, New England Serum Company to Reed Hundt, Chairman of the FCC, dated July 28, 1995; Letter from Charles P. Cannata, The Money Store to Reed Hundt, Chairman of the FCC, dated July 28, 1995; Letter from Kerry P. Lauricella, Repairs, Inc. to Reed Hundt, Chairman of the FCC, dated July 31, 1995; Letter from William M. Bullard, Peachtree Fabrics, Inc. to Reed Hundt, Chairman of the FCC, dated August 2, 1995; Letter from Jeffrey A. Diskin, Hilton Hotels Corporation to Reed Hundt, Chairman of the FCC, dated August 3, 1995; Letter from Robert E. Dirks, Hilton Hotels Corporation to Reed Hundt, Chairman of the FCC, dated August 3, 1995; Letter from John C. DuBose, Barnett Bank to Reed Hundt, Chairman of the FCC, dated August 3, 1995; Letter from Eugene D. Gauthreaux, Terminix to Reed Hundt, Chairman of the FCC, dated August 4, 1995; Letter from John L. Brinker, Hilton Hotels Corporation to Reed Hundt, Chairman of the FCC, dated August 7, 1995; Letter from Christine Brosnahan, Hyatt Hotels & Resorts to Reed Hundt, Chairman of the FCC, dated August 7, 1995; Letter from Jeffery Martin, American Magnetic Media Inc. to Reed Hundt, Chairman of the FCC, dated August 7, 1995; Letter from Sam L. Perry, Hilton Reservations Worldwide to Reed Hundt, Chairman of the FCC, dated August 7, 1995; Letter from Ronald D. Ryan, Ryan International Airlines to Reed Hundt, Chairman of the FCC, dated August 8, 1995; Letter from Larry E. Tramel, Brinks Home Security to Reed Hundt, Chairman of the FCC, dated August 8, 1995; Letter from Julie Stewart, Rosenbluth International to Reed Hundt, Chairman of the FCC, dated August 9, 1995; Letter from Bob Heise, Norwest Technical Services to Reed Hundt, Chairman of the FCC, dated August 10, 1995; Letter from Vincent P. Keenan, Jr., USA Loan, Inc. to Reed Hundt, Chairman of the FCC, dated August 10, 1995.

[76] NANP Order, CC Docket No. 92-237, FCC 95-283 (adopted July 13, 1995).

[77] The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Memorandum Opinion and Order, 59 Rad. Reg. (P&F) 1275, 1284 (1986).

[78] Ameritech Order, 10 FCC Rcd 4596.